

HOUSE BILL No. 1011(ss)

DIGEST OF INTRODUCED BILL

Citations Affected: IC 7.1-5-12; IC 12-7-2-178.8; IC 12-24-2-8; IC 16-18-2; IC 16-41-37; IC 16-18-2-298; IC 16-18-2-318.1.

Synopsis: Smoking ban in public places. Prohibits smoking in: (1) public places; (2) enclosed areas of a place of employment; and (3) certain state vehicles. Exempts gaming facilities and private clubs from the smoking prohibitions. Requires the alcohol and tobacco commission to enforce the prohibitions. Makes it a Class B infraction to violate the smoking prohibition and a Class A infraction if the person has three unrelated prior offenses. Allows certain local government units to adopt more restrictive smoking ordinances. Repeals the current clean indoor air law that prohibits smoking in public buildings.

Effective: July 1, 2009.

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June 23, 2009, read first time and referred to Committee on Rules and Legislative Procedures.

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Introduced

Special Session 116th General Assembly (2009)(ss)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1011

A BILL FOR AN ACT to amend the Indiana Code concerning alcohol and tobacco.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 7.1-5-12 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]:

4 **Chapter 12. Prohibition on Smoking**

5 **Sec. 1. As used in this chapter, "public place" means an enclosed**
6 **area in which the public is invited or permitted.**

7 **Sec. 2. As used in this chapter, "smoking" means the:**

- 8 (1) carrying or holding of a lighted cigarette, cigar, pipe, or
9 any other lighted smoking equipment; or
10 (2) inhalation or exhalation of smoke from lighted smoking
11 equipment.

12 **Sec. 3. (a) Smoking is prohibited in the following:**

- 13 (1) A public place.
14 (2) Enclosed areas of a place of employment.
15 (3) A vehicle owned, leased, or operated by the state if the
16 vehicle is being used for a governmental function.

17 **(b) An employer shall inform each of the employer's employees**

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1 and prospective employees of the smoking prohibition in the place
2 of employment.

3 (c) An owner, an operator, a manager, or other individual with
4 authority shall remove ashtrays or other smoking paraphernalia
5 from areas where smoking is prohibited under this chapter.

6 Sec. 4. (a) Notwithstanding section 3(a) of this chapter, the
7 following facilities may allow smoking on the premises:

8 (1) A horse racing facility that is operated under a permit
9 issued under IC 4-31-5.

10 (2) A riverboat (as defined in IC 4-33-2-17) that is operated
11 under a license issued under IC 4-33-6 or a contract as an
12 operating agent under IC 4-33-6.5.

13 (3) A facility that operates under a gambling game license
14 under IC 4-35-5.

15 (4) A satellite facility that is licensed under IC 4-31-5.5.

16 (5) A business that:

17 (A) is exempt from federal income taxation under 26
18 U.S.C. 501(c);

19 (B) is a club (as defined in IC 7.1-3-20-1) or a fraternal
20 club (as defined in IC 7.1-3-20-7);

21 (C) holds a beer, liquor, or wine retailer's permit; and

22 (D) provides food or alcoholic beverages only to its bona
23 fide members and their guests.

24 (b) The official in charge of a facility that allows smoking under
25 this section must post a conspicuous sign at each public entrance of
26 the facility stating that the facility is a smoking facility.

27 Sec. 5. The commission shall enforce this chapter. The
28 commission may inspect premises that are subject to this chapter
29 to ensure that the person responsible for the premises is in
30 compliance with this chapter.

31 Sec. 6. (a) The official in charge of a public place where smoking
32 is prohibited shall do the following:

33 (1) Post conspicuous signs that read "Smoking Is Prohibited
34 By State Law" or other similar language.

35 (2) Request an individual who is smoking in violation of this
36 chapter to refrain from smoking.

37 (3) Remove an individual who is smoking in violation of this
38 chapter and fails to refrain from smoking after being
39 requested to do so.

40 (b) The proprietor of a restaurant shall post conspicuous signs
41 at each entrance to the restaurant, informing the public that
42 smoking is prohibited in the establishment.

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1 **Sec. 7. A person who smokes in an area where smoking is**
 2 **prohibited by this chapter commits prohibited smoking, a Class B**
 3 **infraction. However, the violation is a Class A infraction if the**
 4 **person has at least three (3) prior unrelated judgments for a**
 5 **violation of this chapter.**

6 **Sec. 8. An owner, manager, or operator of a public place or**
 7 **place of employment that fails to comply with this chapter commits**
 8 **a Class B infraction. However, the violation is a Class A infraction**
 9 **if the person has at least three (3) prior unrelated judgments for a**
 10 **violation under this chapter.**

11 **Sec. 9. This chapter does not prohibit a county, city, town, or**
 12 **other governmental unit from adopting an ordinance more**
 13 **restrictive than this chapter.**

14 SECTION 2. IC 12-7-2-178.8 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 178.8. "Smoking", for
 16 purposes of IC 12-24-2-8, has the meaning set forth in ~~IC 16-41-37-3.~~
 17 **IC 7.1-5-12-2.**

18 SECTION 3. IC 12-24-2-8 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) Notwithstanding
 20 IC 12-27-3-3, the superintendent of a state institution has complete
 21 authority to regulate smoking (as defined in ~~IC 16-41-37-3~~)
 22 **IC 7.1-5-12-2)** within the state institution.

23 (b) A physician licensed under IC 25-22.5 may prescribe nicotine
 24 as is medically necessary for a resident of a state institution.

25 SECTION 4. IC 16-18-2-10, AS AMENDED BY P.L.101-2007,
 26 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2009]: Sec. 10. (a) "Agency", for purposes of IC 16-23.5, has
 28 the meaning set forth in IC 16-23.5-1-2.

29 (b) "Agency", for purposes of IC 16-40-5, has the meaning set forth
 30 in IC 16-40-5-1.

31 ~~(c) "Agency", for purposes of IC 16-41-37, has the meaning set forth~~
 32 ~~in IC 16-41-37-1.~~

33 SECTION 5. IC 16-18-2-295, AS AMENDED BY P.L.41-2007,
 34 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2009]: Sec. 295. (a) "Provider", for purposes of IC 16-21-8,
 36 has the meaning set forth in IC 16-21-8-0.5.

37 (b) "Provider", for purposes of IC 16-38-5, IC 16-39 (except for
 38 IC 16-39-7) and IC 16-41-1 through IC 16-41-9, ~~and IC 16-41-37,~~
 39 means any of the following:

- 40 (1) An individual (other than an individual who is an employee or
 41 a contractor of a hospital, a facility, or an agency described in
 42 subdivision (2) or (3)) who is licensed, registered, or certified as

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a health care professional, including the following:

- (A) A physician.
- (B) A psychotherapist.
- (C) A dentist.
- (D) A registered nurse.
- (E) A licensed practical nurse.
- (F) An optometrist.
- (G) A podiatrist.
- (H) A chiropractor.
- (I) A physical therapist.
- (J) A psychologist.
- (K) An audiologist.
- (L) A speech-language pathologist.
- (M) A dietitian.
- (N) An occupational therapist.
- (O) A respiratory therapist.
- (P) A pharmacist.
- (Q) A sexual assault nurse examiner.
- (2) A hospital or facility licensed under IC 16-21-2 or IC 12-25 or described in IC 12-24-1 or IC 12-29.
- (3) A health facility licensed under IC 16-28-2.
- (4) A home health agency licensed under IC 16-27-1.
- (5) An employer of a certified emergency medical technician, a certified emergency medical technician-basic advanced, a certified emergency medical technician-intermediate, or a certified paramedic.
- (6) The state department or a local health department or an employee, agent, designee, or contractor of the state department or local health department.
- (c) "Provider", for purposes of IC 16-39-7-1, has the meaning set forth in IC 16-39-7-1(a).

SECTION 6. IC 16-18-2-332 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 332. "Smoking", for purposes of IC 16-41-37, has the meaning set forth in ~~IC 16-41-37-3~~. **IC 7.1-5-12-2.**

SECTION 7. IC 16-41-37-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. A person who smokes

- (1) in a public building, except in an area designated as a smoking area under section 5 of this chapter;
- (2) in the retail area of a grocery store or drug store that is designated as a nonsmoking area by the store's proprietor;

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1 (3) in the dining area of a restaurant that is designated and posted
 2 as the restaurant's nonsmoking area by the restaurant's proprietor;
 3 or
 4 (4) in a school bus during a school week or while the school bus
 5 is being used for a purpose described in section 2.3(3) of this
 6 chapter commits a Class B infraction. However, the violation is
 7 a Class A infraction if the person has at least three (3) previous
 8 unrelated judgments for violating this section that are accrued
 9 within the twelve (12) months immediately preceding the
 10 violation.

11 SECTION 8. THE FOLLOWING ARE REPEALED [EFFECTIVE
 12 JULY 1, 2009]: IC 16-18-2-298; IC 16-18-2-318.1; IC 16-41-37-1;
 13 IC 16-41-37-2; IC 16-41-37-3; IC 16-41-37-3.1; IC 16-41-37-5;
 14 IC 16-41-37-6; IC 16-41-37-7; IC 16-41-37-8.

15 SECTION 9. **An emergency is declared for this act.**

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